

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2552 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

Y V JOSHI

Versus

SABHAPATI

Appearance:

MR MANOJ N POPAT for Petitioner
MR PM RAVAL for Respondent No. 1
NOTICE SERVED for Respondent No. 2

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 24/03/2000

ORAL JUDGEMENT

The petitioner possesses the qualification of SSC
Pass, H.Sc. Pass and Montesary Course Certificate. The
petitioner was appointed as a Teacher in the Kindergarten

run by the respondent - nagarpanchayat. She was appointed as an Asst. Teacher by order dated 16.2.1979 with effect from 19.2.1979. For the period from 19.2.1979 till 31.1.1983 the petitioner rendered honorary services. Thereafter the petitioner was appointed as an Assistant Teacher with effect from 1.2.1983. In this petition filed in April 1989 the petitioner prayed for a direction to the nagarpanchayat to treat her in employment and confer all benefits to her including pay scales, seniority and all other admissible allowances in accordance with law. While admitting this petition, this Court granted interim relief to the effect that the petitioner's services shall not be terminated. The said interim relief has continued to operate from 18.4.1989 onwards.

2 In the affidavit in reply it is stated that the petitioner had earlier filed Regular Civil Suit No.43 of 1989 and in the said suit the learned Civil Judge (J.D) Manavadar had granted ad interim relief in favour of the petitioner restraining the respondents herein from obstructing the petitioner in carrying out her duties and restraining the respondents from withholding her salary. However, the petitioner withdrew that suit with a prayer to file a fresh suit. It is submitted that on account of suppression of this fact, the petition deserves to be dismissed.

3. Since the petition was admitted on 2.12.1989 after hearing the other side and since the suit was withdrawn in April 1989 itself even though there was an ad interim relief in favour of the petitioner, this Court does not propose to dismiss the petition on the ground of suppression of the above fact. Considering the fact that the petitioner has been rendering services in the Kindergarten under the respondents since 1979 and that although initially she had offered her services on honorary basis, the petitioner has been rendering services regularly from 1.2.1983 onwards by getting the salary, and the petitioner has continued in service for the last 20 years, this Court does not see any reason as to why the relief as prayed for by the petitioner need not be granted. The stand of the respondent as reflected in the affidavit is that the petitioner's mother was serving in the Kindergarten and, therefore, the petitioner managed to get the appointment. However, the explanation is neither here nor there. The petitioner was appointed by the Chairman of the Nagarpanchayat. Therefore, the Nagarpanchayat cannot refuse to grant the legitimate benefits to the petitioner on the ground that the petitioner's mother was also serving as a teacher in

Kindergarten. In the facts and circumstances of the case and in view of the aforesaid discussion, the petition deserves to be allowed.

4 In the result, it is directed that the respondents shall treat the petitioner as an Assistant Teacher and give her all the benefits including the salary and allowances in accordance with law as are paid to the other teachers in the Kindergarten run by Bantva Nagarpanchayat from time to time. The petition is accordingly allowed. Rule is made absolute with no order as to costs.

(mohd)